

CCRB INVESTIGATIVE RECOMMENDATION

Investigator: Souad Moussawi	Team: Team # 2	CCRB Case #: 200813513	<input type="checkbox"/> Force	<input type="checkbox"/> Discourt.	<input type="checkbox"/> U.S.
			<input checked="" type="checkbox"/> Abuse	<input type="checkbox"/> O.L.	<input type="checkbox"/> Injury
Incident Date(s) Tuesday, 09/16/2008 8:00 PM	Location of Incident: 33rd Road and 12th Street	Precinct: 114	18 Mo. SOL 3/16/2010	EO SOL 3/16/2010	
Date/Time CV Reported Wed, 09/17/2008 9:41 AM	CV Reported At: CCRB	How CV Reported: Phone	Date/Time Received at CCRB Wed, 09/17/2008 9:41 AM		

Complainant/Victim	Type	Home Address

Subject Officer(s)	Shield	TaxID	Command
1. DT3 Bryan Zuccaro	02449	931484	NARCBQN
2. DT3 Kevin Pecorella	03245	921665	NARCBQN

Officer(s)	Allegation	Investigator Recommendation
A.DT3 Kevin Pecorella	Abuse: Detective Kevin Pecorella stopped § 87(2)(b) § 87(2)(b).	
B.DT3 Bryan Zuccaro	Abuse: Detective Bryan Zuccaro stopped § 87(2)(b) § 87(2)(b).	
C.DT3 Kevin Pecorella	Abuse: Detective Kevin Pecorella frisked § 87(2)(b) § 87(2)(b).	
D.DT3 Bryan Zuccaro	Abuse: Detective Bryan Zuccaro searched the car in which § 87(2)(b) was an occupant.	

Synopsis

§ 87(2)(b) filed the following complaint with the CCRB on September 17, 2008, via telephone. On September 16, 2008, at approximately 8:00 PM, § 87(2)(b) was sitting in his car, on 12th Street and 33rd Road, in Queens, when two plainclothes officers approached him. **(Allegation A and B)** § 87(2)(b) identified the officers as Detective Bryan Zucarro and Detective Kevin Pecorella. § 87(2)(b) went to the 114th Precinct stationhouse after the incident and obtained the names of the detectives by providing the license plate number on their van. Detective Zucarro asked § 87(2)(b) to exit his vehicle. Detective Zucarro then slammed § 87(2)(b) up against his vehicle and handcuffed him. Detective Pecorella then frisked § 87(2)(b) **(Allegation C)** Detective Zucarro was looking through the window of § 87(2)(b)'s car. Detective Zucarro searched the vehicle retrieving a plastic bag in which § 87(2)(b) kept a knife. **(Allegation D)** The officers then removed the handcuffs from § 87(2)(b)'s hands and returned to their vehicle and drove away. § 87(2)(b) was not issued a summons.

§ 87(2)(b) alleged that Detective Pecorella and Detective Zucarro stopped him. § 87(2)(b), § 87(2)(g)

§ 87(2)(b) alleged that Detective Pecorella frisked him. § 87(2)(b), § 87(2)(g)

§ 87(2)(b), § 87(2)(g)

Summary of Complaint

§ 87(2)(b) is a § 87(2)(b) black male. § 87(2)(b) was interviewed at the CCRB on October 8, 2008. On September 16, 2008, at approximately 8:00 PM, § 87(2)(b) was sitting in his car, a 2005 maroon Mercury Montigo premier, on 12th Street and 33rd Road, in Queens, a couple of blocks away from his neighborhood. He described the location as secluded with factories. Across the street, there was a baseball field that belonged to Long Island City high school. § 87(2)(b) had just finished washing his car. § 87(2)(b) often goes there after work and sits there for a few minutes just to relax. On that day, § 87(2)(b) was sitting in his car listening to the radio, when an old 15-seater white van pulled up in the opposite direction in front of his car. The van stopped and two plainclothes bald white male police officers under 40 years of age exited the van and approached § 87(2)(b)'s car. Detective Bryan Zucarro was about 5'7 and had an average build and Detective Kevin Pecorella was stockier and a little taller than Detective Zucarro. § 87(2)(b) drove to the 114th Precinct after the incident and inquired about the identity of the officers. The desk sergeant provided him the names of Detective Zucarro and Detective Pecorella and the license plate number of the vehicle they were driving. Detective Zucarro had a shield displayed as he approached § 87(2)(b)'s car by the driver's seat window. He asked § 87(2)(b) for his license and § 87(2)(b) began to reach for it in his back pocket and simultaneously asked, "What seems to be the problem?" Detective Zucarro then said, "Well, what's the matter? What's wrong with you?" § 87(2)(b) told the officer that he § 87(2)(b) was a little agitated or aggravated. Detective Zucarro then ordered § 87(2)(b) out of the car.

§ 87(2)(b) stepped out of the car and pulled his wallet out and had it in his hand. The officers continued to ask § 87(2)(b) "What's wrong with you?" § 87(2)(b) said that he was a little aggravated but that other than that, there was nothing wrong with him. Detective Zucarro then told Detective Pecorella to handcuff § 87(2)(b). § 87(2)(b) said "what are you doing?", but he did not resist. Detective Pecorella slammed § 87(2)(b) on his car (driver's side, back seat) and handcuffed him. § 87(2)(b) stated that this hurt, but did not mention any injuries sustained. Detective Pecorella then frisked § 87(2)(b)'s front-pockets but did not search them. The officers explained to § 87(2)(b) that he was not being arrested and rather simply cuffed in order to restrain him until his license was checked. Detective Kevin Pecorella took § 87(2)(b)'s wallet and placed it on the top of the car and asked him where his license was. § 87(2)(b) replied that his license was in the wallet. Detective Pecorella eventually found

the license. Detective Zucarro then told Detective Pecorella to remove the handcuffs from § 87(2)(b) and Detective Pecorella did so.

Detective Zucarro then began looking inside § 87(2)(b)'s car and asking what was in there. § 87(2)(b) told Detective Zucarro that he had nothing in the car and that it was his vehicle and that he just bought it. The officers never asked § 87(2)(b) for a registration or insurance card. Detective Zucarro kept looking inside § 87(2)(b)'s vehicle and inquiring about various items in there. Detective Zucarro then reached inside of § 87(2)(b)'s driver's side window and pulled out a see-thru plastic sandwich bag with a toothbrush and a little piece of metal he uses as a cleaning device, and asked "what's this; what do you use this for?" § 87(2)(b) stated that the items were a toothbrush and a cleaning device he uses to scrape the top with. Detective Zucarro then put the bag back in the car and inquired about other items in the car including a club (device for locking car steering wheel). The officers never entered § 87(2)(b)'s car. Detective Zucarro then told § 87(2)(b) that he's up to no good, and § 87(2)(b) replied by saying "Maybe you're up to no good." Detective Zucarro told § 87(2)(b) that the only reason he and Detective Zucarro were doing this was because there are a lot of "prostitutes and Johns" in the area.

§ 87(2)(b) told Detective Zucarro that he was "a tax-payer, just like you are § 87(2)(b)". Detective Zucarro asked § 87(2)(b) who he worked for and § 87(2)(b) replied that he worked for § 87(2)(b). He also told Detective Zucarro that he was disabled and told Detective Zucarro that there was a sticker on his car window that indicated his disability. Detective Zucarro asked § 87(2)(b) "What's wrong with you?" § 87(2)(b) replied that he had Neuropathy and described the disorder as nerve damage. At this point, Detective Pecorella began copying things down from § 87(2)(b)'s license and § 87(2)(b) asked Detective Zucarro what Detective Pecorella was writing down. Detective Zucarro told him that Detective Pecorella was noting the stop. § 87(2)(b) replied "You didn't stop me; I was already parked, sitting here." § 87(2)(b) stated that that was what "ticked him off" about the incident. Detective Zucarro then told § 87(2)(b) to be careful. § 87(2)(b) said "You be careful too, but still you have no right to do this." The officers then returned to their vehicle and left.

Results of Investigation

Identification of Officers Interviewed

§ 87(2)(b) drove to the 114th Precinct after the incident where he provided the desk sergeant the license plate number of the van Detective Pecorella and Detective Zucarro were driving. The sergeant provided § 87(2)(b) the names of Detective Zucarro and Detective Pecorella. The movement log for Queens North Narcotics Bureau on September 16, 2008 indicates that Detective Pecorella and Detective Zucarro were working together that day.

Detective Kevin Pecorella (Subject Officer)

Detective Kevin Pecorella is § 87(2)(b)-old white male. He is 5'10 tall and weighs 245 pounds. Detective Pecorella was interviewed at the CCRB on December 30, 2008. On September 16, 2008, Detective Pecorella was working with Detective Bryan Zucarro. They worked from 1:10 PM – 1:00 AM. They were in plainclothes and assigned to a prisoner van. Detective Pecorella had the following entry in his memo-book regarding the incident: "20:55 250 prepared, § 87(2)(b) male black, 116-57 CPW, 12th Street and 33rd Road." Detective Pecorella prepared a 250 report regarding the incident.

On September 16, 2008, Detective Pecorella was on patrol when he observed § 87(2)(b) in the driver's seat of a car on 12th Street and 33rd Road, a zone with high narcotics sales, prostitution and vehicle theft and vandalism. Detective Pecorella had not seen § 87(2)(b) before. § 87(2)(b) was sitting in his car alone and doing nothing. The area was desolate and there was no one else around. Detective Pecorella and Detective Zucarro circled the block a second time about one minute later and § 87(2)(b) was still there. Detective Pecorella and Detective Zucarro approached § 87(2)(b). Detective Pecorella identified himself as a police officer and displayed his badge. Detective Pecorella then asked § 87(2)(b) what he was doing in the area, if he lived there or if he was visiting anyone and § 87(2)(b) said "Leave me alone." Detective Pecorella asked § 87(2)(b) what he was doing in the area, one more time and reminded § 87(2)(b) that he was a police officer. Detective Pecorella told § 87(2)(b) that he was in a high crime area. § 87(2)(b) told Detective Pecorella that he lived in the area and asked him to leave him alone four more times. Each time he would get angrier as his voice became louder. Detective

Pecorella then asked § 87(2)(b) for his driver's license and § 87(2)(b) would not produce it. DT Pecorella looked into § 87(2)(b)'s car and observed him clutching something in his right hand between the seat and the center console. Detective Pecorella could not see what § 87(2)(b) was clutching. Upon further questioning, Detective Pecorella stated that he could not see if § 87(2)(b) had anything in his hand but it appeared that he was hiding something because of the way he was clutching it. Detective Pecorella then asked § 87(2)(b) to remove his hand from the area and § 87(2)(b) refused. Detective Pecorella asked § 87(2)(b) what was in his hand and § 87(2)(b) said "Leave me alone."

Detective Pecorella and Detective Zucarro then opened the front driver's-seat door and removed § 87(2)(b) from his vehicle using minimal force and they handcuffed him for their safety. They grabbed § 87(2)(b) by his hands in order to remove him from the vehicle and positioned him adjacent to the driver's seat door. § 87(2)(b) was not against the car and did not make any contact with the car; he was just standing. Detective Pecorella and Detective Zucarro did not push § 87(2)(b) into the car. Detective Pecorella frisked § 87(2)(b)'s pockets and waist area. There were no objects on § 87(2)(b). The things suspicious about § 87(2)(b) were the fact that he was parked in an isolated crime-prone area, his demeanor after he was approached and questioned and the object he appeared to be clutching. § 87(2)(b) did not resist and the process occurred quickly. Detective Zucarro then removed a cutting instrument from the car and asked § 87(2)(b) what it was. § 87(2)(b) stated that he uses the instrument to cut sandwiches. Detective Pecorella did not remember whether he asked Detective Zucarro to remove the instrument from the car. The instrument was in a plastic Ziploc bag and it was 5 inches long. It was directly next to the driver's seat where § 87(2)(b) had his hand clutched earlier. § 87(2)(b) became compliant at this point. § 87(2)(b) told Detective Pecorella that he lives in the § 87(2)(b), which were only four blocks away, and that he parks in this neighborhood and then he showed Detective Pecorella his ID. Detective Pecorella could not recall where § 87(2)(b)'s ID was or whether he had it in the car or on his person. Detective Pecorella removed the handcuffs from § 87(2)(b) and inspected his identification and let him go. The incident outside of the car lasted for approximately 3 minutes. Detective Pecorella did not think that § 87(2)(b) had a problem with Detective Zucarro entering his car. Detective Pecorella has worked in Queens Narcotics and the 114th Precinct for 6 months.

Detective Bryan Zucarro (Subject Officer)

Detective Bryan Zucarro is a § 87(2)(b)-old white male. He is 5'7 tall and weighs 185 pounds. Detective Zucarro was interviewed at the CCRB on January 14, 2009. On September 16, 2008, Detective Zucarro worked from 2:00PM -10:00PM with Detective Pecorella and was assigned to a prisoner van. Detective Zucarro and Detective Pecorella were not uniformed and they were assigned to a grey unmarked van. Detective Zucarro did not write any entries in his memo-book regarding the incident. At approximately 8:00 PM on September 16, 2008, in the vicinity of 33rd Road and 12th Street in Queens, Detective Zucarro and Detective Pecorella were conducting a buy-and-bust operation. They were in a prisoner van and they were driving down the side streets of three housing projects in a low-lit industrial area with heavy narcotic-use and a prostitution problem. Detective Zucarro and Detective Pecorella noticed § 87(2)(b)'s car parked on a side street. There were no other cars or individuals around the car. § 87(2)(b) was the only occupant of the car. Detective Pecorella and Detective Zucarro drove by the car twice.

Detective Zucarro and Detective Pecorella then prepared to approach § 87(2)(b)'s car. Detective Zucarro could not recall whether he or Detective Pecorella made the decision to approach § 87(2)(b)'s vehicle or if it was a mutual decision. Detective Zucarro could not see what § 87(2)(b) was doing in the car. Detective Zucarro noticed § 87(2)(b) moving around in the car but could not see where his hands were. Detective Zucarro could not describe the movements of § 87(2)(b) at this time. Detective Zucarro had his shield displayed as he approached the passenger-side of § 87(2)(b)'s vehicle. Detective Pecorella approached the driver's side of the vehicle. § 87(2)(b) was not compliant as Detective Pecorella began asking him if the vehicle he was occupying was his. Detective Pecorella asked § 87(2)(b) for identification. Detective Zucarro could not hear what § 87(2)(b) said in response to this request. Detective Zucarro believes that § 87(2)(b) was agitated because of the questions Detective Pecorella was asking him.

Detective Pecorella then signaled to Detective Zucarro that he was planning on removing § 87(2)(b) from his vehicle. Detective Zucarro believes that Detective Pecorella may have asked § 87(2)(b) to exit

his vehicle. Initially, Detective Zucarro stated that Detective Pecorella opened the driver's-side car-door and § 87(2)(b) exited the vehicle of his own free will. Upon further questioning, Detective Zucarro stated that § 87(2)(b) opened the door of the vehicle himself. DT Pecorella then handcuffed § 87(2)(b) immediately. Detective Pecorella asked § 87(2)(b) to turn around and place his hands together. § 87(2)(b) did so willingly. Detective Pecorella did not push § 87(2)(b) against his vehicle. § 87(2)(b) seemed agitated because he asked why he was being handcuffed and Detective Pecorella and Detective Zucarro told him he was being handcuffed because he had a knife in the car and handcuffing him would ensure everyone's safety, and therefore knew about the existence of the knife from Detective Pecorella. Detective Zucarro did not observe the knife until Detective Pecorella recovered it later on in the incident. § 87(2)(b) seemed calm at this point. § 87(2)(b) then began to ramble about having a bad day. § 87(2)(b) told Detective Pecorella and Detective Zucarro that he parked his car at this location in order to relax. Detective Zucarro approached the driver's side of § 87(2)(b)'s vehicle. Detective Zucarro noticed Detective Pecorella reach into the front seat of vehicle and remove a knife. Detective Zucarro did not see the knife prior to the point when Detective Pecorella removed it from the vehicle and he does not know where the knife was located in the vehicle. The knife was about 6 inches long and could have been a folding knife. Detective Zucarro could not recall whether the knife was inside anything. § 87(2)(b) stated that he used it for cutting food after he was questioned by Detective Pecorella. Detective Zucarro asked § 87(2)(b) for a license and § 87(2)(b) stated that the license was in his back-pocket. Detective Zucarro asked § 87(2)(b) if he could reach the wallet with hand-cuffs on and § 87(2)(b) stated that he could and reached into his back-pocket and removed his wallet and handed it to Detective Zucarro. Detective Zucarro did not frisk § 87(2)(b) and does not recall if Detective Pecorella frisked him. Detective Zucarro never removed anything from § 87(2)(b)'s vehicle and never reached into it.

§ 87(2)(b) was handcuffed for approximately two minutes. As soon as Detective Pecorella and Detective Zucarro verified that the car § 87(2)(b) was driving was his own, they removed the handcuffs. Detective Pecorella and Detective Zucarro did not run a license plate check or a driver's license check on § 87(2)(b)'s car. § 87(2)(b) produced a valid driver's license and registration to the vehicle. Detective Zucarro and Detective Pecorella placed the knife back in the car when they determined that they were not going to arrest § 87(2)(b). They asked § 87(2)(b) not to touch the knife until they were in their van.

Police Documents

The movement log for the 114th Precinct on September 16, 2008 indicates that Detective Pecorella and Detective Zucarro were working together that day.

Civilian CCRB History

This is the first complaint on file for § 87(2)(b) (Encl. 3).

Officer CCRB History

Detective Kevin Pecorella

In his ten-year tenure, Detective Pecorella has no substantiated allegations on his record. Detective Pecorella currently has one other case open (Encl. 2A).

Detective Bryan Zucarro

In his six-year tenure Detective Zucarro has three substantiated allegations under case number 200709264. The substantiated allegations were of a frisk, a search of a person and a vehicle search (Encl. 2B). Detective Zucarro currently has one other open case.

Conclusions and Recommendations

Subject Officer Identification

§ 87(2)(b) provided the following physical descriptions for Detective Zucarro and Detective Pecorella. § 87(2)(b) described Detective Zucarro as a white bald male about 5'7 tall and Detective Pecorella as a white bald male with an average build who is stockier and a little taller than Detective Zucarro. Detective Pecorella is 5'10 tall and Detective Zucarro is 5'7 tall. Although they look similar, one is clearly taller than the other and therefore a distinction can be made.

§ 87(2)(b) stated that he was stopped by Detective Zucarro and Detective Pecorella. PO Detective Zucarro and Detective Pecorella confirmed that they stopped § 87(2)(b) § 87(2)(g). § 87(2)(b) alleged that he was frisked by Detective Pecorella. Detective Pecorella stated that he frisked § 87(2)(b). Detective Zucarro stated that he did not frisk § 87(2)(b) § 87(2)(g). § 87(2)(b) further alleged that the officer who did not frisk him searched his vehicle. All accounts of this incident are unanimous in identifying Detective Pecorella as the officer who frisked § 87(2)(b) § 87(2)(b), § 87(2)(g).

Undisputed Facts

It is not disputed that Detective Zucarro and Detective Pecorella stopped § 87(2)(b) on September 16, 2008 while he was in his vehicle. It is not disputed that Detective Pecorella frisked § 87(2)(b).

Assessment of the Evidence

§ 87(2)(b) alleged that he was stopped by Detective Zucarro and Detective Pecorella. Detective Zucarro and Detective Pecorella stated that they observed § 87(2)(b) sitting in his car doing nothing in a secluded zone with high narcotics sales, prostitution, vehicle theft and vandalism and therefore decided to question him about this. Detective Pecorella asked § 87(2)(b) what he was doing in the area and if he lived there or was just visiting. According to NYPD Street Encounters: Legal Issues Guide (encl. 1D), request for information is permissible even if criminality is not suspected. After questioning § 87(2)(b) Detective Pecorella became suspicious as § 87(2)(b) kept asking the officers to leave him alone. § 87(2)(b) told Detective Pecorella that he lived in the area and told Detective Pecorella to leave him alone four times and each time he would get angrier as his voice would get louder. Detective Pecorella then asked § 87(2)(b) for his identification. § 87(2)(g)

Detective Pecorella stated that § 87(2)(b) refused to produce identification. Detective Pecorella further stated that after asking § 87(2)(b) for identification he observed § 87(2)(b) clutching his right fist, making him believe that § 87(2)(b) had something in his hand, though he could not identify what this object was and could not see if there was an object in § 87(2)(b)'s hand. DT Pecorella stated that he then asked § 87(2)(b) to remove his hand from the area and § 87(2)(b) refused. Detective Pecorella further stated that he asked § 87(2)(b) what was in his hand and § 87(2)(b) said "Leave me alone." § 87(2)(b) alleged that at this point, the officers asked him to step out of his vehicle and handcuffed him. § 87(2)(b), § 87(2)(g). According to NYPD Street Encounters: Legal Issues Guide (encl. 1D), an officer may stop a civilian if he has reasonable suspicion that the individual is committing or has committed a crime. § 87(2)(b), § 87(2)(g).

§ 87(2)(b) was subsequently frisked by Detective Pecorella. Detective Pecorella and Detective Zucarro confirmed that § 87(2)(b) exited his vehicle upon request and was handcuffed. Detective Pecorella confirmed that he frisked § 87(2)(b) § 87(2)(b), § 87(2)(g).

Detective Zucarro stated that § 87(2)(b) was frisked after a cutting instrument was discovered in his vehicle by Detective Pecorella. New York State Penal Law 140.50 (encl. 1E), NYPD Patrol Guide Procedure 212-11 (encl. 1A-C), and the NYPD Street Encounters: Legal Issues Guide (encl. 1D) indicates that officers may frisk and search people in public when they reasonably suspect that the individual is committing or has committed a crime. § 87(2)(b), § 87(2)(g).

§ 87(2)(b) further alleged that Detective Zucarro searched his vehicle after Detective Pecorella frisked him. Detective Pecorella confirmed § 87(2)(b)'s allegation as he stated that Detective Zucarro removed

a cutting instrument from § 87(2)(b)'s car after he was frisked and asked § 87(2)(b) what it was. § 87(2)(b) stated that he uses the instrument to cut sandwiches. Detective Pecorella did not remember whether he asked Detective Zucarro to remove the instrument from the car. The instrument was in a plastic Ziploc bag and it was five inches long. It was directly next to the driver's seat where § 87(2)(b) had his hand clutched earlier. According to New York Search and Seizure 5.05[2], (encl.), the police may search a vehicle...when they have probable cause to believe that it contains contraband, a weapon, or evidence of a crime. § 87(2)(b), § 87(2)(g)

According to § 87(2)(b) Detective Zucarro specifically searched for the knife in the area where § 87(2)(b) was clutching his hand and did not search other parts of the vehicle. A knife was ultimately recovered from § 87(2)(b)'s vehicle.

Allegations Not Pleaded

§ 87(2)(b) alleged that Detective Pecorella slammed him against his car while he handcuffed him. § 87(2)(b) stated that this hurt, but did not mention any injuries sustained. § 87(2)(b), § 87(2)(g)

Allegation A: Detective Kevin Pecorella stopped § 87(2)(b)

Allegation B: Detective Bryan Zuccaro stopped § 87(2)(b).

§ 87(2)(b) alleged that he was stopped by Detective Pecorella and Detective Zucarro. As discussed above, according to NYPD Street Encounters: Legal Issues Guide (encl. 1D), an officer may stop a civilian if he has reasonable suspicion that the individual is committing or has committed a crime. § 87(2)(b), § 87(2)(g)

Allegation C) Detective Kevin Pecorella frisked § 87(2)(b).

§ 87(2)(b) alleged that Detective Pecorella frisked him. As discussed above, New York State Penal Law 140.50 (encl.1E), NYPD Patrol Guide Procedure 212-11 (encl. 1A-C), and the NYPD Street Encounters: Legal Issues Guide (encl. 1D) indicates that officers may frisk and search people in public when they reasonably suspect that the individual is committing or has committed a crime. § 87(2)(b), § 87(2)(g)

Allegation D) Detective Zuccaro searched the car in which § 87(2)(b) was an occupant.

§ 87(2)(b) alleged that Detective Zucarro searched his vehicle. Detective Pecorella confirmed § 87(2)(b)'s statement. As discussed above, New York Search and Seizure 5.05[2], (encl.), indicates that the police may search a vehicle...when they have probable cause to believe that it contains contraband, a weapon, or evidence of a crime. § 87(2)(b), § 87(2)(g)

Investigator:

Date:

Supervisor:

Date:

Reviewed by:

Date:

Reviewed by:

Date: